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PATENT TRADEMARK OFFICE

PATENT

Attorney Docket No. 03806.0517



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: )  
Francis BLANCHE *et al.* )  
Application No.: 09/970,663 )  
Filed: October 5, 2001 )  
For: COMPOSITION FOR THE )  
PRESERVATION OF )  
INFECTIOUS RECOMBINANT )  
ADENOVIRUSES )

Group Art Unit: 1635  
Examiner: B. Whiteman

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JUL 19 2002

Assistant Commissioner for Patents  
Washington, DC 20231

TECH CENTER 1600/2900

Sir:

**RESPONSE TO ELECTION OF SPECIES REQUIREMENT**

In the election of species requirement dated June 17, 2002, the Office required Applicants to elect a species comprising an adjuvant selected from a polymer, sugar, or alcohol, according to claim 16.

The election of species requirement is respectfully traversed. To be fully responsive, however, Applicants provisionally elect, with traverse, a polymer, according to claim 16.

At least pending claims 10-18 and 21-23 read on the elected species.

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Applicants traverse the election of species requirement on the grounds that the Office has not shown that there would be a serious burden to examine all of the claimed species. Applicants respectfully submit that a search of the subject matter of all claims would not be burdensome because all claims recite, for example, a composition comprising adenoviral particles, a buffer solution that maintains the pH of said composition between 8.0 and 9.6, and glycerol, wherein said composition does not contain added divalent metal cations or alkali metal cations. Accordingly, Applicants respectfully request that all the claims, 10-23, be examined together in this application without an election requirement.

If the Examiner chooses to maintain the election requirement, however, and should the elected species be found allowable, Applicants expect the Office to continue to examine the full scope of the claimed subject matter to the extent necessary to determine the full scope of the patentability thereof, *i.e.*, extending the search to the non-elected species, such as of claims 19 and 20 which read on non-elected species, as is the duty of the Office according to MPEP § 803.02 and 35 U.S.C. § 121. Accordingly, pending allowance of a generic claim, the Applicants should be entitled to consideration of additional species that are written in dependent form or otherwise include all the limitations of the allowed generic claim. MPEP § 802 and 37 CFR 1.141(a).

If the Examiner believes a telephone conference would be useful in resolving any outstanding issues, he is invited to call Applicants' undersigned representative at 202-408-4128.

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Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: July 16, 2002

By: 

Charles D. Niebylski  
Reg. No. 46,116

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